

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: June 12, 1995

TO: Roy H. Garner, Regional Director, Region 28

FROM: Barry J. Kearney, Acting Associate General Counsel, Division of Advice

SUBJECT: Silver State District Council of Carpenters (No Employer Named), Cases 28-CA-4297; 4317; 4317-2; Silver State District Council of Carpenters Cases 28-CB-4297; 4317; 4317-2

133-2550, 240-6725, 536-2501, 536-5050-6775

These Section 8(b)(1)(A) cases were submitted for advice as to whether the Union unlawfully caused the removal of dissident members from its property.

Facts

There have long been opposing factions in Carpenters Local 1780 which, in February 1993, was placed under supervision (trusteeship) by the International. In July 1994, the International reorganized the Local into four newly-formed locals and created the Charged Party District Council to include them and two other locals. A dissident group of members began meeting in October to oppose the International's actions, and filed a lawsuit contesting the trusteeship in November.

On December 15, at a membership meeting attended by dissident member Tufaro, it was announced that over \$2 million of Local 1780's liquid assets were being turned over to the District Council. On December 16, Tufaro announced that anyone in the Union hall upset about this and interested in taking action should give the dissidents their names and addresses so he could inform them about the next dissident group meeting. He and other dissidents collected names on a pad of paper at one of the tables in the hall. After a few hours, a District Council official told one of the dissidents that the Union would not allow them to sit there and talk against the Union's conduct. An International representative then informed the dissident that he would call the police if names continued to be collected. This threat was reiterated several times that day when other dissident members returned to collect signatures. Later, police officers arrived, conferred with the District Council and International officials, and informed a dissident that he would be arrested if he didn't leave. He left under protest after ascertaining that he would be allowed at the hall during the children's party on the next day if he didn't collect signatures.

On December 17, that dissident and Tufaro sat at a table inside the door to the hall and collected signatures. Union business agents ordered them to leave or he would call the police. When the police arrived and the dissidents explained what they were doing, one of the officers said he saw no problem as long as they didn't start a fight or create a disturbance.

On January 21, the members of the Union Executive Board and delegates from the District Council's constituent locals met at the Union hall. Tufaro and other dissidents passed out their newsletter in the parking lot to those attending the meeting. Upon learning that a second reading of proposed bylaws would occur, the dissidents tried unsuccessfully to attend the meeting, which Union officials stated was an "executive session."⁽¹⁾ A business agent then went outside, informed the dissidents that they were trespassing because it was a non-business day, and the police would be called if they didn't leave the premises. After the police arrived and discussed the situation with both the dissidents and Union officials, the business agent read the trespass warning and the dissidents left.

According to the Charging Parties, there are no rules limiting members' access to the Union hall. Moreover, someone had sold Super Bowl T-shirts at the hall, discount coupon books have been sold, and political candidates for public office have distributed fliers there. Additionally, members occasionally sell handmade or school fund-raiser items at the hall.

Action

We conclude, in agreement with the Region, that the Union violated Section 8(b)(1)(A) by threatening members with arrest, and calling the police, because they were engaged in dissident activities at the Union hall.

The LMRDA, 29 U.S.C. 411(a)(2), confers upon union members the right to participate freely in the internal affairs of a union, including the right to distribute dissident literature critical of the union's operations. The failure to permit distribution of dissident literature on union property, under certain circumstances, has been found to violate the LMRDA.⁽²⁾ Further, Section 7 protection has been extended to the exercise of these rights. Thus, in *Carpenters Local 22 (Graziano Construction)*, 195 NLRB 1, 2 (1972), the Board held that a union violated Section 8(b)(1)(A) when it fined union members in retaliation for exercising their LMRDA and Section 7 rights to participate fully and freely in internal union affairs. There, the Board found that the imposition of a \$75 fine impaired an overriding policy of the Federal labor laws, set forth in the LMRDA, and constituted restraint and coercion within the meaning of Section 8(b)(1)(A).⁽³⁾

However, the right to engage in dissident or other activities protesting a union's actions is not unlimited. Thus, where a dissident engages in otherwise protected conduct but acts in a disorderly or disruptive manner, such conduct is unprotected, and subject to discipline by a union.⁽⁴⁾ In this regard, the proviso to Section 8(b)(1)(A) permits a union to assure order on its premises, consistent with the limitations set forth in *Scofield v. NLRB*, 394 U.S. 423, 430 (1969), i.e., an internal union rule will fall within the purview of the proviso to Section 8(b)(1)(A) if the rule "reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and they are reasonably enforced against union members who are free to leave the union to escape the rule."

Here, the coercive removal of the dissidents on the three days in question restrained them in the exercise of their Section 7 and LMRDA rights to distribute literature critical of the Union leadership and, under the foregoing principles, constitutes an unfair labor practice because it was not based on a legitimate union interest. Thus, on December 16, the dissident activity occurred in the Union hall when the facility was open for members to conduct business and there is no evidence that it was disrupting Union functions. The Charging Parties assert, and the Union does not dispute, that there are no rules limiting members' access to the Union hall. Moreover, there is evidence of disparate treatment in that the Union has allowed access to its hall for non-Union related business during regular business hours. Therefore, the Union's sole interest in requiring the dissidents to leave was the stifling of protected intra-union activity, and therefore was not legitimate under *Scofield*.

Similarly, the Union had no legitimate interest in removing the dissidents during the children's Christmas Party on December 17. Although the hall was not open for normal business, the Union conducted a function there for all members and their families. Again, the Union sought to stifle only protected intra-union activity which were low-key and did not disrupt the party. Finally, although the Union hall itself was not open to any members other than those entitled to attend the Executive Board meeting on January 21, the dissidents had been distributing their intra-union literature in the parking lot without being disruptive and without interference prior to the meeting. The Region has determined that they were not removed from the premises because they wished and/or attempted to attend the meeting, but rather because they wished to remain in the parking lot after the meeting began. However, since the dissidents desired to handbill or otherwise appeal to Executive Board members who would leave the Union hall when the meeting ended and were not being disruptive, the Union had no legitimate interest in causing their removal from the parking lot.

Accordingly, an appropriate Section 8(b)(1)(A) complaint should issue, absent settlement.

B. J. K

¹ Two dissidents entered the foyer with some delegates after the doors were locked, but apparently returned to the parking lot after again being denied permission to attend the meeting.

² *Morrissey v. Wall*, 96 LRRM 2809 (S.D.N.Y. 1977) (court declared no-distribution rule invalid where there was no evidence that member's disruption of hiring hall was related to the distribution of literature and where police were never called).

³ See also *Teamsters Local 597 (Janesville Auto Transport)*, 310 NLRB 975 (1993); *Machinists Local 707 (United Technologies)*, 276 NLRB 985 (1985), *enfd.* 817 F.2d 235 (2d Cir. 1987); *Steelworkers Local 1397 (U.S. Steel Corp.)*, 240 NLRB 848 (1979).

⁴ New York City Taxi Drivers (Taxi Maintenance Corp.), 231 NLRB 965, 966-67 (1977); Teamsters Local 87 (Harry Shain), 273 NLRB 1838 (1985) (union lawfully fined and disciplined employee who became involved in an altercation with the office manager following discovery of the inadvertent omission of his name from an unofficial work dispatch list). Accord: Carpenters Local 1913 (Michael R. Amato), 189 NLRB 521 (1971), enf. 464 F.2d 1395 (9th Cir. 1972) (union fined member for being boisterous, noisy, abusive in the hiring hall).